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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF TEXAS**

9
10 EMILY PAP, Plaintiff,
11 v.
12 MACY'S, INC. AND DEPARTMENT
13 STORES NATIONAL BANK,
14 Defendants.

Case No.: 4:18-cv-4025

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

1. **TCPA, 47 U.S.C. §227 *et seq.***
2. **Tex. Fin. Code § 392.301 *et seq.***
3. **Invasion of Privacy**

15 Plaintiff Emily Pap ("Plaintiff"), through her attorneys, alleges the following
16 against Macy's, Inc. ("Macy's") and Department Stores National Bank ("DSNB")
17 (collectively "Defendants"):

18
19 **INTRODUCTION**

20 This is a three-count complaint based on violations of the Telephone Consumer
21 Protection Act, 47 U.S.C. §227 *et seq.* (TCPA), and Texas Protection of Consumers of
22 Financial Services, Tex. Fin. Code § 392.301 *et seq.* (TPCFS), and intrusion upon Plaintiff's
23 seclusion/Invasion of Privacy, against Defendants and their agents for their use of automatic
24 dialers and their harassing, abusive, deceptive and unfair practices in connection with the
25 collection of Plaintiff's consumer debts.

26
27 **JURISDICTION AND VENUE**

1. Jurisdiction of the court arises under 28 U.S.C. §1331 and 47 U.S.C. §227.
2. Venue is proper pursuant to 28 U.S.C. 1391(b)(2) in that a substantial part

1 of the events or omissions giving rise to the claim occurred in this District, because
2 Plaintiff resides in this District, and Plaintiff received Defendants' telephone calls in this
3 District.

4 3. Defendants transact business in this District; therefore, personal jurisdiction
5 is established.

6 **PARTIES**

7 4. Plaintiff is a natural person residing in Harris County, TX.

8 5. Plaintiff is a ("consumer") as defined under Tex. Fin. Code § 392.301(1).

9 6. Defendant Macy's, Inc. is a corporation that issues credit cards through
10 Department Stores National Bank, with its principal place of business at 7 West Seventh
11 Street, Cincinnati, OH 45202.

12 7. Defendant DSNB is a ("creditor") and a ("debt collector") under Tex. Fin.
13 Code §§ 392.301(3), (6), with its principal place of business located at 701 East 60th
14 Street, Sioux Falls, SD 57104.

15 8. Defendant acted through their agents, employees, officers, members,
16 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
17 representatives, and insurers.

18 **FACTUAL ALLEGATIONS**

19 9. Plaintiff applied for and received a Macy's-branded credit card from DSNB.
20 Plaintiff used the credit card to make purchases for personal, family and household
21 purposes. Plaintiff owes a debt to DSNB.

22 10. In or around March of 2018, DSNB began making calls to Plaintiff seeking
23 repayment of Plaintiff's debt. DSNB would call Plaintiff at least one hundred and twenty-
24 five (125) times.

25 11. DSNB made calls to Plaintiff using the telephone numbers (513) 573-8028,
26 (513) 573-8717, (513) 573-8738, (513) 573-8739, (513) 754-9822, (513) 754-9841, (513)
27 754-9852, (513) 754-9874, (727) 556-5772, (727) 556-7300, (800) 782-7756, (877) 469-
28 6547, (877) 469-6548, (877) 469-6548, which belong to or are operated by DSNB.

1 12. All of DSNB's calls to Plaintiff were made to Plaintiff's cell phone number,
2 ending in 6316.

3 13. On or around March 20, 2018, Plaintiff received a call from (727) 556-7300.

4 14. When Plaintiff answered the phone, she heard a pause before the agent
5 began to speak, indicating use of an automatic telephone dialing system.

6 15. During that call, DSNB's representative explained that he/she was calling to
7 attempt to collect on Plaintiff's debt.

8 16. Plaintiff explained that she was going through a hardship and was unable to
9 make any payment.

10 17. Plaintiff also instructed DSNB's representative to stop calling Plaintiff but
11 instead to communicate with Plaintiff through the mail.

12 18. Despite Plaintiff having revoked consent to be called, between March 20
13 and May 1, DSNB called Plaintiff at least sixty (60) times using an ATDS.

14 19. On or about May 1, 2018, Plaintiff received a call from (513) 573-8028.

15 20. When Plaintiff answered the phone, she heard a pause before the agent
16 began to speak, indicating use of an automatic telephone dialing system.

17 21. The representative of DSNB who was connected to the call introduced
18 herself as Shonda Johnson. The representative stated she was calling to collect on
19 Plaintiff's debt.

20 22. Plaintiff explained to DSNB's representative that Plaintiff was going
21 through a hardship and thus enable to may any payments on her debt. Plaintiff further
22 explained that she had been affected by Hurricane Harvey and was struggling to get back
23 on her feet ever since.

24 23. Plaintiff further explained that Plaintiff herself would contact DSNB when
25 Plaintiff could make a payment.

26 24. Despite Plaintiff's initial request to only be contacted through the mail, and
27 despite Plaintiff further explaining her inability to make a payment during the May 1 call,
28 DSNB called Plaintiff approximately thirty more times (30) through May 12, 2018 using

1 an ATDS.

2 25. On or about May 12, 2018, Plaintiff received a call from (800) 782-7756.

3 26. When Plaintiff answered the phone, she heard a pause before the agent
4 began to speak, indicating use of an automatic telephone dialing system.

5 27. The representative of DSNB who was connected to the call introduced
6 herself as Jennifer. The representative stated she was calling to bring Plaintiff's account
7 current.

8 28. Plaintiff answered the call and explained that Plaintiff had spoken to another
9 representative from DSNB only a week before and had been clear that she was going
10 through a tough financial hardship and thus could not make payments at that time. Plaintiff
11 complained about what could have changed in one week for DSNB to be calling her again
12 so soon.

13 29. DSNB's representative answered that DSNB's system is programmed to
14 automatically dial Plaintiff's phone number, that the representatives have no control over
15 who or how often the system calls debtors such as Plaintiff.

16 30. Plaintiff again told DSNB that Plaintiff herself would call DSNB when
17 Plaintiff could make a payment.

18 31. Still, despite Plaintiff having revoked consent to be called twice before and
19 again on May 12, 2018, after May 12, DSNB called Plaintiff another twenty-two (22)
20 times using an ATDS.

21 32. DSNB made at least 125 calls to Plaintiff in less than two months.

22 33. DSNB frequently called Plaintiff several times a day, up to five times a day.
23 For example, on March 28, 2018, DSNB called Plaintiff five times, at 8:06 am, 11:26 am,
24 1:34 pm, 5:08 pm, and 7:08 pm. The following day, DSNB called Plaintiff four times, at
25 8:06 am, 11:07 am, 2:13 pm, 5:14 pm.

26 34. Each and every one of those telephone calls caused Plaintiff distraction,
27 temporary loss of use of her telephone line, and annoyance.

28 35. Defendant is familiar with the TCPA, and the TPCFS.

1 36. Defendant's conduct as described above was intended to harass, coerce, and
2 intimidate Plaintiff into payment of the alleged debt, to increase the amount Plaintiff was
3 willing to pay, or to cause Plaintiff to make a small payment that would restart the statute
4 of limitations.

5 37. Defendant's conduct as described in detail above amounted to an unfair or
6 unconscionable means to collect or attempt to collect the alleged debt.

7 38. DSNB phone calls to Plaintiff's cellular phone caused Plaintiff extreme
8 emotional distress, aggravation, embarrassment, anguish, and mental pain. Defendant's
9 conduct further exacerbated Plaintiff's emotional distress from being affected by
10 Hurricane Harvey, because DSNB added more worries to Plaintiff's financial problems.

11 39. Defendants phone calls were pervasive and continuous and a knowing
12 intrusion into Plaintiff's right to be left alone.

COUNT I

Violations of the TCPA, 47 U.S.C. §227

15 40. Plaintiff incorporates the foregoing paragraphs as though the same were set
16 forth at length herein.

17 41. Defendants violated the TCPA. Defendants' violations include, but are not
18 limited to the following:

19 a. Within four years prior to the filing of this action, on multiple occasions,
20 Defendants violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in
21 pertinent part, “[i]t shall be unlawful for any person within the United States
22 . . . to make any call (other than a call made for emergency purposes or made
23 with the prior express consent of the called party) using any automatic
24 telephone dialing system or an artificial or prerecorded voice — to any
25 telephone number assigned to a . . . cellular telephone service . . . or any
26 service for which the called party is charged for the call.

27 b. Within four years prior to the filing of this action, on multiple occasions
28 Defendants willfully and/or knowingly contacted Plaintiff at Plaintiff's

cellular telephone using an artificial prerecorded voice or an automatic telephone dialing system and, as such, Defendants knowingly and/or willfully violated the TCPA.

42. As a result of Defendants' violations of 47 U.S.C. § 227, Plaintiff is entitled to an award of five hundred dollars (\$500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendants knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an award of one thousand five hundred dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

COUNT II

Violations of the Tex. Fin. Code § 392.301 *et seq.*

43. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

44. Defendants violated the TPCFS. Defendant violated the TPCFS by calling Plaintiff at least 125 times. Defendants' conduct violates the TPCFS because “[i]n debt collection, a debt collector may not oppress, harass, or abuse a person by: . . . (4) causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.” Tex. Fin. Code § 392.302(4).

45. Defendants' acts, as described above, were done intentionally with the purpose of harassing Plaintiff in connection with her debt.

46. As a result of the foregoing violations of the TPCFS, Defendants are liable to Plaintiff for actual damages, attorneys' fees and costs.

COUNT III

Defendants' Invasion of Privacy of Plaintiff

1. Plaintiff incorporates herein by reference all of the above paragraphs of this complaint as though fully set forth herein at length.

2. Restatement of the Law, Second, Torts, § 652(b) defines intrusion upon seclusion as “[o]ne who intentionally intrudes... upon the solitude or seclusion of another,

or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person".

3. Defendants violated Plaintiff's privacy. Defendants' violations include, but are not limited to, the following:

- a. Defendants intentionally intruded, physically or otherwise, upon Plaintiff's solitude and seclusion by engaging in harassing phone calls in an attempt to collect on an alleged debt despite having unequivocally revoked consent to be called.
- b. The number and frequency of the telephone calls to Plaintiff by Defendants constitute an intrusion on Plaintiff's privacy and solitude.
- c. Defendants' conduct would be highly offensive to a reasonable person as Plaintiff received calls that often interrupted Plaintiff's work and sleep schedule, as well as temporarily occupying Plaintiff's telephone line.
- d. Defendants' acts, as described above, were done intentionally with the purpose of coercing and oppressing Plaintiff to pay the alleged debt.

4. Defendants' conduct was unreasonable, unjustified and unwarranted because Plaintiff revoked consent to be called.

5. As a result of Defendants' violations of Plaintiff's privacy, Defendants are liable to Plaintiff for actual damages. If the Court finds that the conduct is found to be egregious, Plaintiff may recover punitive damages.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a trial by jury of all issues triable by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Emily Pap respectfully requests judgment be entered against Defendants for the following:

- A. Declaratory judgment that Defendants violated the TCPA and the TCPFS;
- B. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §

1 227(b)(3)(C).

2 C. Actual damages pursuant to Tex. Fin. Code § 392.403(a)
3 D. Costs and reasonable attorney's fees pursuant to Tex. Fin. Code § 392.403(b);
4 E. Awarding Plaintiff any pre-judgment and post-judgment interest as may be
5 allowed under the law; and
6 F. Any other relief that this Court deems appropriate.

7
8 Respectfully submitted this 24th day of October 2018.

9
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